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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,113	09/18/2002	Peter A. Montana II	PM01	8210
27797	7590	04/11/2005	EXAMINER	
RICHARD D. FUERLE 1711 W. RIVER RD. GRAND ISLAND, NY 14072			MORAN, KATHERINE M	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 04/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary**Application No.**

10/065,113

Applicant(s)

MONTANA, PETER A.

Examiner

Katherine M. Moran

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 September 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Applicant's amendment of 1/18/05 has been received and reviewed. Applicant amended claims 1-5, 9, 11, 12, 15, and 18 and submitted remarks.

Drawings

1. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the structural features of the invention are not illustrated. The drawings which were submitted on 9/18/02 are too small to discern structural details. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Specification

2. The disclosure is objected to because of the following informalities: pg.5, par. 24, line 1: "preferably" should be --preferable--.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "logo piece", the recitation of claim 2 of a crown having a rectangular cross-section, and the recitation of claim 11.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1-4, 15, and 18 all recite subject matter which was not previously recited in the specification or the claims. For example, claim 1 recites a brim having a central opening, a gap between the crown and the opening, and the bottom of the crown having sides not in contact with the central opening. Claim 2 recites a crown having a rectangular cross-section. Claim 3 recites a crown cut from a single can carton.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 3, 6, 9, 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neppell (U.S. 1,418,198) in view of Koecher et al. (Koecher, U.S. 5,553,327). Neppell discloses the invention substantially as claimed. Neppell teaches a cardboard hat formed by a method comprising cutting out a pattern suitable for forming a brim 10 having a central opening, a crown 11 insertable into the central opening, where the bottom of the crown has tabs formed by slits 16 and mouths 17, with the tabs extending from its sides for slideably engaging the brim and the sides are not in contact with the central opening. There is a gap between the crown and the opening as shown in Figure 1. With regard to claims 11 and 12, Neppell teaches the use of a cutting tool in the form of a stamp for forming the crown 11 or brim tongues 12. However, Neppell does not teach that the hat portions are cut from at least two can cartons, or that the can cartons are for holding 12 oz cans. Koecher teaches a method of making a hat 10 comprising cutting pieces out of one or more can cartons in patterns that can be assembled into a hat and assembling the pieces. The cartons are formed from cardboard and include a product logo piece 12 and other graphics. Koecher teaches in col. 1, lines 13-15 that cartons of 12 or 24 12 oz. cans are common and that the hat 10 may be made from a single 24-pack cardboard container but other sizes, types and numbers of containers may be used. Koecher also teaches that people like to collect different items containing the product logos of different beverage brands and may wish to display these items to show their support or loyalty for a particular brand of beverage. Therefore, it would have been obvious to one of ordinary skill in the art to

form the hat of Neppell from the cartons as taught by Koecher, to reduce waste and allow fans and collectors to proudly display their brand loyalty.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Neppell '198/Koecher '327 as applied to claim 1 above, and further in view of Ulrich (U.S. 5,121,506). Neppell discloses the invention substantially as claimed. However, Neppell doesn't teach a wire attached to the brim to hold the brim in a desired shape. Ulrich '506 teaches headgear 10 with a wire 16 serving as a brim reinforcing member. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide Neppell's brim with a wire in order to maintain the brim in a desired configuration.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Neppell '198/Koecher '327 as applied to claim 1 above, and further in view of Cheng (U.S. 6,561,393). Neppell discloses the invention substantially as claimed. However, Neppell doesn't teach a chin strap attached to the brim. Cheng '393 teaches a hat 10 with a chin strap 38 attached to the brim for engaging under the wearer's chin. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide Neppell's hat with the chin strap as taught by Cheng in order to maintain the hat in the desired position on the wearer's head.

9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Neppell/Koecher as applied to claim 1 above, and further in view of Applicant's specification. Neppell discloses the invention substantially as claimed. However, Neppell doesn't teach cutting cartons selected from the group consisting of 12 can

cartons about 7 3/4 inches high, about 10 1/2 inches long, and about 4 3/4 inches wide, 18 can cartons about 7 3/4 inches high, about 15 1/2 inches long, and about 4 3/4 inches wide, and 24 can cartons about 10 1/2 inches high, about 15 1/2 inches long, and about 4 3/4 inches wide. Applicant's specification recites these dimensions as the standard measurements currently used in the manufacturing industry for 12, 18, and 24 can cartons. Accordingly, it stands to reason that any 12, 18, or 24 can carton used for the purposes of making the hat would conform to the claimed dimensions. Therefore, it would have been obvious to one of ordinary skill in the art to employ cartons having the claimed dimensions since these dimensions were recited in the specification as being those currently used in forming 12, 18, or 24 can cartons.

Allowable Subject Matter

10. Claims 15-20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 1st paragraph, set forth in this Office action.

11. Claims 2, 4 and 5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 1st paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

12. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection prompted by Applicant's amendments to the claims.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Katherine Moran at (571) 272-4990. The examiner can be reached on Monday-Thursday from 8:30 am to 6:00 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert, may be reached at (571) 272-4983. The official and after final fax number for the organization where this application is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kmm

April 7, 2005

A handwritten signature in black ink, appearing to read "K Moran", with a long horizontal flourish extending to the right.

Katherine Moran

Primary Examiner, AU 3765